

COOK COUNTY SHERIFF'S MERIT BOARD

In the Matter of:

**CORRECTIONAL OFFICER
JEFFERY V. FERRELL**

[REDACTED]

Employee # [REDACTED] Star #9226

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) Docket No. 1764
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)

In the Matter of:

**CORRECTIONAL OFFICER
CHRISTIAN VAZQUEZ**

[REDACTED]

Employee # [REDACTED] Star #8858

)
)
) Docket No. 1766
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)
)

In the Matter of:

**CORRECTIONAL OFFICER
LAWRENCE O'ROURKE**

[REDACTED]

Employee # [REDACTED] Star #9748

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) Docket No. 1767
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DECISION

This matter coming on to be heard, by Board member Brian J. Riordan, pursuant to notice, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

1. Correctional Jeffrey Ferrell (hereinafter "Ferrell") was appointed a Cook County Correctional Officer on July 10, 2000. On July 6, 2000, Ferrell was assigned Division IX of the Cook County Department of Corrections located at 2834 W. 31st Street, Chicago, Illinois 60608.

2. Correctional Officer Christian Vazquez (hereinafter "Vazquez") was appointed a Cook County Correctional Officer on April 17, 2006. On November 20, 2006, Vazquez was assigned Division IX of the Cook County Department of Corrections located at 2834 W. 31st Street, Chicago, Illinois 60606.

3. Correctional Officer Lawrence O'Rourke (hereinafter "O'Rourke") was appointed a Cook County Correctional Officer on November 22, 2010. On March 14, 2011, O'Rourke was assigned Division IX of the Cook County Department of Corrections located at 2834 W. 31st Street, Chicago, Illinois 60608.

4. At all relevant times the three Respondents were on duty at Division IX of the Cook County Department of Corrections ("CCDOC") where they were participating in moving detainee Kevin Robinson through the facility.

5. Respondents' positions as a Correctional Officer involve duties and responsibilities to the public;

6. Each member of the Cook County Sheriff's Merit Board, hereinafter "Board", has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and

7. The Board has jurisdiction of the subject matter and of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and

8. Respondents were personally served with copies of the Complaints against them and a Notice of Hearing and appeared before the Board to contest the charges contained in the Complaints with counsel; and

9. The Board has heard the evidence presented by the Sheriff and the Respondent and has evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background

The Sheriff's Office alleges that on January 18, 2012, the Respondents all participated in the movement of detainee Kevin Robinson through the facility and down a hallway in Division IX towards an elevator to be removed from his cell area. It is alleged that there had previously been an altercation between Respondent Ferrell and detainee Robinson. It is further alleged that a video regarding this incident was being taken by Respondent Vazquez and that excessive force was used against the detainee by Officer Ferrell. The Sheriff further alleges that no report of this incident was completed by Officer O'Rourke or Vazquez even though they clearly witnessed the incident. The allegations are that Respondent Ferrell used excessive force against the detainee by kneeling him on the right side of the head area while he was handcuffed, bent over and causing injury to Kevin Robinson, specifically abrasions to the face and left hand contusion.

The Sheriff further alleges that the Respondents were not honest and forthright in their responses to the investigators from the Office of Professional Review ("OPR"). Specific allegations against Respondent Vazquez indicated that he did not properly videotape the incident and at various times the camera was not even facing the detainee or other officers. Finally, it is alleged that the Respondents did not make proper documentation in reporting of the incident to OPR and indicated that they never saw excessive force being used.

The Sheriff seeks suspension of 90 days for Respondent Vazquez and O'Rourke and seeks termination for Respondent Ferrell. The Sheriff alleges the violations of the Rules and Regulations of the General Orders of the Cook County Department of Corrections. The Sheriff specifically alleges that the Respondents violated:

GENERAL ORDER 3.8

ETHICS AND STANDARDS OF CONDUCT, in its entirety, including but not limited to, the following subparts

I. POLICY

It is the policy of the Cook County Department of Corrections (CCDOC) that employees will conduct themselves in a professional and ethical manner, both on and off duty. Employees will not engage in activities unbecoming of county employees, or conduct that reflects unfavorably to the Office of the Sheriff of Cook County.

III. REQUIREMENTS

The CCDOC Code of Ethics requires the highest level of conduct from all employees. It is the expectation that sworn and civilian employees conduct themselves with high standards of professional conduct and behavior. Employees that fall [sic] to maintain high standards of conduct and ethics, will be subject to corrective or disciplinary action, and may include recommendation for termination.

A. Compliance with Laws and Regulations

1. Employees will obey all federal, state, county and municipal laws
4. Employees will comply with lawful departmental rules, written procedures, directives, bulletins, and verbal orders issued by the proper authorities.

D. Professional Conduct

2. Detainees will not be subjected to sexual, emotional, verbal or physical abuse or the use of unnecessary levels of force.
4. Employees will not commit acts that jeopardize security of the facility or the health, safety and welfare of detainees, staff and visitors.

GENERAL ORDER 4.1

INTERNAL INVESTIGATIONS, in its entirety, including but not limited to, the following subparts

III. REQUIREMENTS

Misconduct which impairs an employee's ability to perform his/her assigned responsibilities, or adversely affects or involves the Cook County Department of Corrections and/or the Office of the Sheriff of Cook County may be cause for disciplinary action.

Serious misconduct would include those violations of the law which constitutes a misdemeanor or a felony, or alleged/suspected, violations of Cook County Department of Corrections rules and orders which pose a threat to the safety of staff or inmates or the security of the institution. Included also is misconduct committed while an employee is off duty/outside the institution where in the official character and status of the employee as a correctional officer, deputy sheriff, law enforcement officer, or civilian correctional employee becomes identifiable and calls into question the reputation of the County of Cook, the Office of the Sheriff, or the Department of Corrections.

A. Guidelines for **SERIOUS MISCONDUCT** include, but are not limited to:

5. Failure to observe all Federal, State and local laws.
10. Inmate, employee or visitor abuse.
17. Engage in any conduct unbecoming an employee of the Cook County Department of Corrections which tends to reflect discredit on the Department of Corrections or Sheriff's Office.
18. Making a false official report, either oral or written.

GENERAL ORDER 11.2.1.0 (effective September 19, 2011)

RESPONSE TO RESISTANCE/USE OF FORCE POLICY, in its entirety, including but not limited to, the following subparts

II. POLICY

Officers shall use an amount of force reasonable and necessary based on the totality of the circumstances to perform a lawful task, effect on arrest, overcome resistance, control a subject, or protect the officer(s) or others from injury, as specified by federal/Illinois statutes and case law.

The CCSO utilizes the Use of Force Model (2010) – John C. Desmedt and Protective Safety Systems Incorporated to provide guidance on the appropriate amount of force to be used to effect a lawful purpose and to articulate a detailed report on the officer's actions. The Use of Force model employs the progressive and reasonable escalation and de-escalation of officer applied force in proportional response to the actions and level of resistance offered by a subject.

Every use of force greater than social control, officer presence or verbal control must be reported as outlined in this directive. Officers shall not unreasonably endanger themselves or another person to conform to the restrictions of this directive.

V. DEFINITIONS

- E. Excessive force – The application of an unreasonable amount of force in a given incident based on the totality of the circumstances.

VII. GUIDELINES

- E. When force is applied, officers shall escalate or de-escalate their use of force based on the subject's resistance.

X. PROHIBITED/RESTRICTED ACTS

The use of excessive force is prohibited. Officers using excessive force, unwarranted physical force, or verbal abuse shall be subject to disciplinary action up to and including termination of employment.

- A. The following acts are prohibited:

- 6. striking, hitting or punching a restrained or handcuffed and non-combative subject; and
- 7. use of force against a subject after the subject has ceased to offer resistance and is under.

XIII. APPLICABILITY

- A. By order of the Sheriff of Cook County, this Sheriff's Order applies to all CCSO officers and must be strictly observed.

- B. Any conflicts with previous orders, policies or procedures shall be resolved in favor of this order.
- C. All CCSO officers are required to familiarize themselves with the contents of this order and to adhere to the policy established herein.

GENERAL ORDER 24.9.1.0 (effective July 11, 2011)

REPORTING INCIDENTS, in its entirety, including but not limited to, the following subparts

II. POLICY

It is the policy of the CCDOC to have written procedures for reporting and documenting incidents involving staff, inmates, and visitors, as well as to ensure that incidents or problems with the facility, i.e., sanitation, plumbing, electrical, ventilation, or any other situation that creates a dangerous workplace, are reported and documented in a timely and professional manner.

Employees shall immediately report to their supervisor any information indicating a violation or attempted violation of criminal laws, or a threat to the safety and security of the facility, its property or any person.

Reports shall be made verbally and in writing as directed by this order.

VII. PROCEDURES

A. Notification

1. All reportable incidents occurring within CCDOC involving staff, inmates, or visitors are required to be verbally reported and documented on an Incident Report by staff via the chain of command.
2. Response to resistance/use of force incidents by staff shall be reported in accordance with the current Cook County Sheriff's Office (CCSO) Response to Resistance/Use of Force Policy.

B. Incident Report Requirements

2. CCDOC staff shall completely and accurately document any incident or situation that he or she observes or that is reported to him/her.

3. All CCDOC staff shall promptly prepare the Incident Report and forward the report to the supervisor.
 6. Incident Reports shall be prepared immediately after an incident in order to be as accurate as possible; however, they shall be completed, submitted and reviewed by a supervisor prior to being relieved from duty.
- C. Any employee failing to file a report or filing a false report shall be subject to disciplinary action up to and including termination of employment and/or the filing of criminal charges.
- F. General Reporting Guidelines
2. Complete and accurate documentation of events and incidents within CCDOC facilities and other sites are essential. Written reports and reports in IMACS serve to keep staff informed of developments and problem areas within the facility. Reports are also instrumental in the planning and implementation of Sheriff's Office policies and procedures.

SHERIFF'S ORDER 11.2.20.2 (effective January 25, 2013)

RULES OF CONDUCT, in its entirety, including but not limited to, the following subparts:

II. POLICY

The CCSO serves the citizens of Cook County by performing law enforcement functions in a professional manner, and it is to these citizens that the CCSO is ultimately responsible. Employees of the CCSO shall conduct themselves in a professional and ethical manner both on and off duty. Employees shall not engage in activities that reflect unfavorably on the CCSO but shall instead serve to further the mission of service.

D. Prohibited associations, establishments, and activities.

25. Fail to cooperate or fail to be truthful with external and/or internal agencies in an investigation of a criminal or civil matter.

H. Reporting violations.

4. Employees are prohibited from making a false report, written or oral.

Furthermore, the Sheriff alleges the Respondent's actions violated the Rules and Regulations of the Sheriff's Merit Board, specifically:

COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B

No Police Officer of the Cook County Sheriff's Police Department, Correctional Officer of the Cook County Department of Corrections or Deputy Sheriff of the Cook County Sheriff's Court Services Department will:

1. violate any Law or Statute of any State or of the United States of America.
2. violate any Ordinance of any County or Municipal Government.
3. violate any of the general orders, special orders, directives or rules and regulations of the Cook County Sheriff's Department.

Prosecution Case

The prosecution called each of the Respondents to the stand as well as OPR investigator John Kerlin and Miriam Rentas. The crux of the prosecution's case was video that had been taken by Officer Vazquez of the inmate Kevin Robinson being walked down a hallway toward an elevator.

Christian Vazquez

Officer Vazquez testified he was the person who was operating the video camera at the time of the incident. He testified that he had never been trained on the camera's use or how he was supposed to videotape incidents. He stated that it was a new procedure that when there was movement throughout the facility with an inmate, that it was to be videotaped. Officer Vazquez testified regarding his statements to the OPR investigator. Officer Vazquez identified each of the other people in the video and testified that he did give a statement to OPR. Officer Vazquez testified that he signed a statement that did not contain anything regarding a sudden movement by the detainee which we later understand to be a kneeling by Officer Ferrell. He testified that he did not fill out an incident report regarding his videotaping of the movement of detainee Robinson. He stated he believed there was already an incident report being completed by Officer Ferrell. His testimony regarding not knowing how to use a very basic video camera was not credible. He also should have at least made the attempt to report the incident and been cooperative with OPR.

On cross examination Officer Vazquez stated he is not required to file an incident report when he knows that one is already being completed. He further testified that he was not given instruction on how to use the video camera or what areas he should tape and not tape. This testimony was not credible and was common sense that he should not videotape the floor during a detainee moving. He stated that he had only done it about two or three previous to this incident.

Lawrence O'Rourke

Officer O'Rourke testified regarding the video and identified himself and all the other officers. He stated that he only recalled the incident months later after he was shown the video because they moved detainees throughout the facility all the time. He stated that OPR never showed the video to him and they were vague with him in his initial interview regarding what they were seeking. He said he was brought into OPR twice and talked with Miranda O'Boyle and some other gentleman that he did not know. He stated he did sign the statement for OPR that was shown to him as a Sheriff's exhibit. He testified that he does see a sudden movement of detainee Robinson and stated that he did tell the OPR investigators that he saw that movement. He stated he was not clear in his statement because they paraphrased what he told them and that it was not a word for word resuscitation of what he said. He believed that the statement was being recorded and they would have a word for word recording of his statement but he later learned that they did not. He stated that the part of his OPR statement that is true is that he never saw Correctional Officer Ferrell knee detainee Robinson and that had he seen that he would have filled out the proper paperwork.

On cross examination, Officer O'Rourke testified that previous to the escorting of detainee Robinson there had been an altercation up on the cell deck with Officer Ferrell and the detainee. They thought the detainee might need to go to Cermak because of the earlier altercation and that is why he was being moved. He stated that he took over the control of the detainee shortly after getting into the elevator. He stated he did not fill out a report of the incident because he knew Officer Ferrell was filling one out. He also thought that Officer Montoya had done a witness statement to the use of force. He stated that because he did not witness any use of force that he was not required to fill out any type of incident report. He was ordered by no one to fill out any type of report. It was clear from the video that Sgt. Elwood pointed out to O'Rourke that the movement was being videotaped, as a warning. It is not credible that O'Rourke did not know that his was an excessive incident.

Jeffrey Ferrell

Respondent Ferrell testified regarding the video and identified himself and the other officers in the video. He testified regarding his statements to OPR and that he actually filled out a report asking for criminal charges be brought against detainee Robinson. In the OPR report, Respondent Ferrell denied kneeling detainee Robinson after he was handcuffed. He stated that was a paraphrase of the testimony that he gave to OPR and he stated that he denies ever mistreating the detainee.

The Respondent testified regarding the previous incident where the detainee was being prepared to go to court and they are searched and handcuffed at that time and that he refused to

come out of the cell and put his hands on the wall. He stated that the detainee turned around and punched Officer Ferrell in the face and a struggle ensued with the detainee and that it took time to get him in handcuffs and they needed to be OC sprayed. This all occurred prior to escorting the detainee down the hallway where the video was shown.

Respondent Ferrell stated he did complete a use of force report after the incident. He stated that it dealt with the entire incident from when he got the detainee out of the cell, all the way to the point where he left the detainee at the elevator. He stated that his report to OPR did not include any of the events that were on the video. He stated he did not make it part of that report but that he did put it in the incident report for the use of force.

Next the use of force report was shown to the witness and Respondent Ferrell testified that he completed this report after the incident. He stated that it was not in the narrative but he did check off the boxes on page 1 where he indicates reason for use of force, subject actions. He marked off not responsive to verbal direction, stiffened. In addition, he was classified as a high risk because of the circumstances and the environment in Division IX made him high risk. He stated he also marked timeliness in getting the detainee under control and that he was a moving resistor and pulling away from the officer. He further marked the boxes regarding avoiding control by the officer, creating space between the officer and himself. The additional boxes checked were the assailant was a mid-level, he attacked without a weapon and that he had punched the officer. He tried other non-use of force options such as verbal commands, handcuffing, blocking and taking down the detainee. He further marked that he did engage in elbow strikes, knee strikes, closed hand punch and OC spray in this particular incident.

He testified that in the video it is clear that he did knee the inmate in an attempt to control him. He stated that the reasons he needed to continue to control the detainee is that he was weighing himself down instead of walking cooperatively and in addition he was creating space and pulling away from the Respondent. He stated that the detainee was continuing to make himself "dead weight" and that they literally had to carry him by his arms and handcuffs. He stated that the detainee is continuously moving in different directions and not moving in accordance with the officer and that he is leaning against the officer forcing him to carry him.

Officer Ferrell stated that the reason he had to knee the detainee was the use of force module states that if we have a moving resistor that we can use diffuse strikes to the large muscle groups. The attempt was to strike the knee to his chest to gain better control of him and get him to comply. He believes he struck him in the chest and that is where the umpf sound came from.

Upon cross examination, Officer Ferrell testified regarding the all available that was called in Division IX which means that an officer is at risk or in harm's way and needs assistance from an officer that is available. He knows of no classes or training that was done to assist the officers in learning how to videotape or use the video cameras. He said he was not given a chance to review the video when he was being accused of kicking detainee Robinson.

The Respondent testified that basically his use of force was directly related to the non-compliance of getting the detainee to move in the direction he wanted. He did admit he had four other officers around him and that the detainee was in handcuffs so the risk to the officers or himself was diminished greatly.

John Kerlin

Investigator John Kerlin testified regarding his review of the file, his interviews with the Respondents and the charges brought against each of the officers. It was his opinion that the actions by the Respondents violated the Rules and Regulations of Sheriff's Merit Board. He stated that he has reviewed over 100 excessive force cases and he knows the procedures and policies implemented by the Sheriff regarding how the officers are trained with use of force. He stated it was the responsibility of anyone involved in a use of force incident or witnessing the use of force to complete a statement and incident report. He specifically cited to the section that indicates that striking, hitting, or punching a restrained or handcuffed non-combative subject is prohibited. It was his understanding that non-combative is someone who is already under control and is handcuffed and being directed by an officer. He reiterated that Section 24.9.1.0 requires that all Cook County Department Correction Officer staff promptly prepare an incident report and forward the report to the supervisor when there is allegations of inappropriate or excessive force.

Investigator Kerling testified during cross examination regarding his attending classes by the Department of Corrections regarding use of force training. He stated that this was not a case that had been expedited so it was true that there were approximately two years that went by before a full investigation was complete. He had to agree that it was the OPR's determination that this case did not involve allegations of such a serious nature as to warrant expedited review of the case.

On redirect, Investigator Kerlin confirmed that all the witnesses before signing a statement have a chance to review them, edit and add anything that they believe was not accurately contained in the statement.

Miriam Rentas was called as a witness, but provided no additional relevant testimony.

Dennis Andrews

Witness Andrews testified regarding his knowledge of the use of force doctrines and paradigm and when it is appropriate and inappropriate to use excessive force. He testified how an incident can be de-escalated by then there is always a threat of it re-escalating and the need for excessive force can occur again.

The parties rest and closing arguments were provided.

Findings of Fact

Based on the evidence presented, the testimony and the video that was shown and produced into evidence, as well as all the other exhibits that were admitted into evidence, it is the Board's decision that it was not proven that Respondent Christian Vazquez violated the Sheriff's Orders or the Cook County Merit Board Rules. However, this Board believes that Respondent Vazquez should be required to complete additional training on videotaping a transport, the rules regarding excessive force, as well as the reporting rules when there is an excessive force incident.

It is the Board's decision that Respondent Lawrence O'Rourke did not violate the Sheriff's Orders and the Cook County Merit Board Rules.

It is the Board's decision that Respondent Ferrell did violate the Sheriff's Orders and the Cook County Merit Board Rules and Regulations, specifically 3.8, 4.1, 11.2.1.0, 24.9.1.0, 11.2.20.2 and Article X.

CONCLUSIONS OF LAW

Based on the evidence presented and after assessing the credibility of the witnesses and the weight to be given the evidence and the record, the Board finds that the Respondents Vazquez and O'Rourke did not violate the Rules and Regulations of the Cook County Sheriff's Office and the Merit Board.


However, this Board believes that Respondent Vazquez should be required to complete additional training on videotaping a transport, the rules regarding excessive force, as well as the reporting rules when there is an excessive force incident.

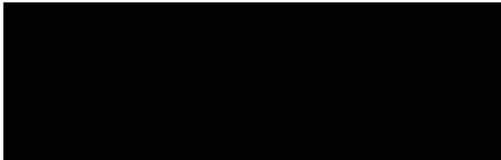
It is further the decision of the Board that Officer Jeffrey Ferrell did violate the Rules and Regulations of the Cook County Sheriff's Merit Board by his use of excessive force on the detainee when he was handcuffed and surrounded by four other officers. It is clear that Officer Ferrell, based on his own testimony, as well as that of the other officers did use excessive force against the detainee and did not have proper cause to do so. Even after given numerous opportunities to explain himself, he attempted to rationalize his decision to knee the detainee in the chest and his testimony was non-credible.

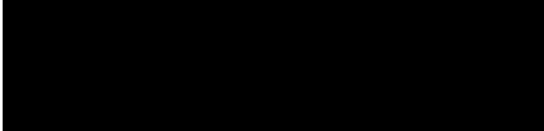
Furthermore, Respondent Ferrell was not truthful in his responses to the investigator at OPR regarding his contact with detainee Robinson while he was handcuffed.


Wherefore, based on the foregoing it is hereby ordered that Respondent Jeffrey Ferrell be separated from employment with the Cook County Sheriff's Office effective June 10, 2014.

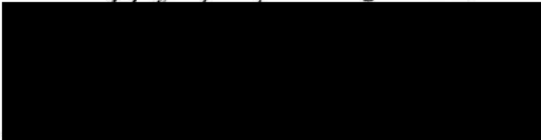
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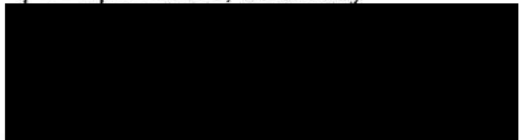

James P. Nally, Chairman



Byron Brazier, Vice-Chairman



* Brian J. Riordan - Hearing Officer


John D. Dalicandro, Secretary


Kim R. Widup, Board Member


Vincent T. Winters, Board Member


Jennifer E. Bae, Board Member


Patrick Brady, Board Member

Date May 14th 2015